

## COMBINED DECLARATION AND POWER OF ATTORNEY

### **Attorney's Docket No. FRAC-US-C1**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name. I believe I am an original, first and joint inventor (if more than one name is listed below), or an original, first and sole inventor (if only one name is listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

“Analysis and Fractionation of Particles Near Surfaces”

the specification of which is attached hereto.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which I know to be material to the patentability of this application as defined in Title 37, Code of Federal Regulations 1.56, which is re-printed below.

As a named inventor, I hereby appoint the following attorneys to prosecute this application and transact all business in the Patent and Trademark Office connected therewith:

Eric P. Mirabel  
Reg. No. 31,211

Send correspondence and direct telephone calls to:

Eric P. Mirabel  
Bioarray Solutions  
35 Technology Drive  
Warren NJ 07059  
(908) 226 8200 Ext 203

I hereby claim the benefit of **foreign priority** under Title 35, United States Code, Section 119(a) to (e) or under Section 365(b) of any foreign applications for patent or inventor's certificate or under Section 365(a) of any PCT International Application designating at least one country other than the United States listed below and also have identified below such foreign applications for patent or inventor's certificate or PCT international application filed by me on the same subject matter having a filing date within twelve months before that of the application on which priority is claimed.

Country/PCT:

Application Number

Date of filing

Date of issue

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, and claim the benefit under Title 35, United States Code, Section 119(e) for any provisional application(s) listed below, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose to the Office information which I know to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application(s) and the national or PCT international filing date of this application:

PCT International Application No. PCT/US02/08706, Filed: 3/21/2002;  
US Application Serial No. 09/813,571, filed 3/21/2001

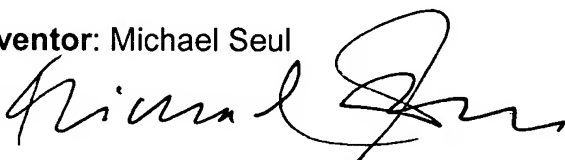
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

**Before signing this declaration, the person signing must read the declaration carefully and verify the correctness of the**

**statements herein and that all required actions have been taken, including review of the specification and the claims of the patent application.**

Full name of **first inventor**: Michael Seul

Inventor's signature:

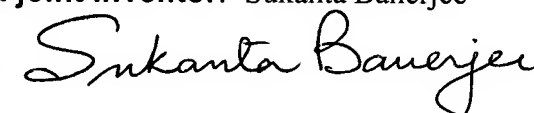


Date: 9-9-03 Country of Citizenship: Germany

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Full name of **second joint inventor**: Sukanta Banerjee

Inventor's signature:



Date: 09-09-2003 Country of Citizenship: INDIA

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Full name of **third joint inventor**: Kairali Podual

Inventor's signature:



Date: 09/09/2003 Country of Citizenship: INDIA

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**37 CFR 1.56: Duty to disclose information material to patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all

information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and

- (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or

- (2) It refutes, or is inconsistent with, a position the applicant takes in:

- (i) Opposing an argument of unpatentability relied on by the Office, or

- (ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;

- (2) Each attorney or agent who prepares or prosecutes the application;

and

- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.